



**STATEMENT OF THE ROCKLAND COUNTY DISTRICT
ATTORNEYS OFFICE REGARDING THE
INVESTIGATION INTO THE DEATH OF HERVE GILLES**

MAY 8, 2012

INTRODUCTION:

Review of the evidence in this matter reveals the death of Herve Gilles to be a tragedy. One that highlights the lack of resources and programs present in our community to treat the seriously mentally ill who interact with the criminal justice system. It is apparent that Rockland County needs a Mental Health Court similar to the one established in Westchester County. To date, our County has not received the funding for such a Court. Mr. Gilles had many prior interactions with the police and criminal justice system. If a Mental Health Court had been existent Mr. Gilles perhaps could have been mandated into treatment before his mental health and behavior escalated out of control presenting a life threatening danger. Loss of life is tragic and highlights the need to devote resources to a problem in our community, which has not been properly addressed.

On December 14, 2011 at approximately 3:22 a.m., Herve Gilles, age 48, was fatally shot by Police Officer John Roper (hereinafter, "P.O. Roper") of the Village of Spring Valley Police Department in the parking lot located on the corner of E. Furman Place and Franklin Street, Spring Valley, New York. At the time, P.O. Roper was responding to a call of Herve Gilles throwing rocks near El Buen Gusto Bar and Restaurant located at 11 E. Furman Place, Spring Valley. Mr. Gilles attacked and assaulted P.O. Roper after taking P.O. Roper's nightstick and striking P.O. Roper with the nightstick with such force that P.O. Roper was in extreme pain and caused momentary numbness and impairment of P.O. Roper's arm. P.O. Roper knew that if Mr. Gilles' blow struck him in the head, it would have been sufficiently powerful to kill him or in the very least to render him unconscious and defenseless. P.O. Roper was in fear for his life. As Mr. Gilles raised the nightstick again to strike P.O. Roper, P.O. Roper drew his service weapon and fired a shot, which struck Mr. Gilles in the neck, in an attempt to stop Mr. Gilles from continuing his assault, to no avail. Mr. Gilles continued to strike at P.O. Roper with the nightstick. P.O. Roper fired again, striking Mr. Gilles in the head, fatally wounding him. Mr. Gilles was pronounced dead at 3:42 a.m.

Four investigations immediately commenced: the Rockland County Sheriffs Department Bureau of Criminal Investigation, the Village of Spring Valley Police Department, the Rockland County Medical Examiner's Office and the Rockland County District Attorneys Office. The investigations were independent; the investigating officers had no involvement whatsoever with the events leading up to Herve Gilles' death.

The investigative process of the Rockland County Sheriffs Department Bureau of Criminal Investigation included taking photographs at the scene and transporting evidence to and from the Medical Examiners Office.

The Village of Spring Valley Police Department's investigation included canvassing the area for witnesses and evidence and taking statements from witnesses and/or potential witnesses.

The Rockland County Medical Examiner's Office conducted an autopsy of Herve Gilles.

The Rockland County District Attorneys Office conducted its own separate investigation into this matter. Members of the Rockland County District Attorneys Office were notified of this incident and immediately began investigating the case. This separate and extensive investigation included, but was not limited to: canvassing the

scene, examining the scene, attending the autopsy, reviewing the other agencies investigations, interviewing all potential witnesses to this incident, reviewing independent reports, reviewing 911 recordings and radio transmissions, interviewing numerous police officers, requesting and reviewing video surveillance in the area of the incident, reviewing police academy policies – including the Rockland County Police Academy (which is accredited by the Municipal Training Police Council under the New York Division of Criminal Justice Services), reviewing police department policies, reviewing medical records, reviewing mental health records, hiring an independent forensic dentist to conduct an examination, hiring an independent laboratory to conduct examinations on clothing and ballistics examinations, reviewing school records, reviewing employment records, meeting with concerned citizens of the Village of Spring Valley, speaking with surviving family members of Herve Gilles and interviewing potential witnesses provided by representatives of Mr. Gilles' family.

Following the investigation, evidence was presented in this matter to a Rockland County Grand Jury. The Grand Jury heard testimony from fifteen (15) witnesses and examined exhibits over the course of four (4) days. The Grand Jury has finished its investigation and finds that P.O. Roper was justified in using deadly physical force against Herve Gilles and finds no basis for criminal charges against P.O. Roper arising out of the death of Herve Gilles.

Although Grand Jury proceedings by law are secret, the investigation into the death of Herve Gilles, conducted and developed outside the Grand Jury process, is not bound by any such rule of secrecy. Therefore, this report is being made available to the public. The following is a synopsis of the evidence uncovered by the investigation.

BACKGROUND:

The names of the civilian witnesses in this case will remain confidential at this point.

HERVE GILLES:

Mr. Gilles was born in Haiti on April 9, 1963. Mr. Gilles came to the United States in 1984 and lived in Rockland County in the Spring Valley and Haverstraw areas.

Mr. Gilles suffered from Paranoid Schizophrenia, which is a chronic mental illness that caused him to lose touch with reality (psychosis) and has caused him to have delusions. Mr. Gilles consumed alcohol regularly; in fact he was described as a chronic alcoholic. Mr. Gilles also used marihuana.

The investigation revealed that Mr. Gilles was a nice man when he was sober and taking his psychotropic medication. In fact, Mr. Gilles donated a lot of his time to the Church. However, when Mr. Gilles became intoxicated and/or high on drugs and/or stopped taking his medication, he became a different person. Mr. Gilles' behavior became irrational, illogical and extremely dangerous to himself and others. In fact, Mr. Gilles used to refer to himself as a "demon" and "the devil."

Unfortunately, members of the Village of Spring Valley Police Department were extremely familiar with Mr. Gilles and the way he acted when he was intoxicated, drugged and/or not taking his medication. Since 1990, Mr. Gilles was arrested criminally thirty-three (33) times, including eight (8) felony arrests (four of them being violent), eighteen (18) misdemeanors and seven (7) violations. Mr. Gilles has ten (10) convictions, including nine (9) misdemeanors and one (1) violation. Most of the crimes involve violent assaults, possession of a weapon, resisting arrest, destruction of property and disorderly conduct.

Comorbidity means two or more coexisting medical conditions or disease processes that are additional to an initial diagnosis. According to the American Medical Association, "Schizophrenia, Substance Abuse and Violent Crime" (May 20, 209 – Vol. 301, No.19), "the rate of violent crime in individuals diagnosed as having schizophrenia and substance abuse comorbidity (27.6%) was significantly higher than those without comorbidity (8.5%)...the association between schizophrenia and violent crime is minimal unless the patient is also diagnosed as having substance abuse comorbidity."

The first Mental Health Court in the United States opened in 1997 in Broward County, Florida. Modeled after drug courts and developed in response to the overrepresentation of people with mental illnesses in the criminal justice system, Mental Health Courts divert select defendants with mental illnesses into judicially supervised, community-based treatment. Currently, all Mental Health Courts are voluntary. Defendants are invited to participate in the Mental Health Court following a specialized screening and assessment; they may choose to decline participation. For those who agree to the terms and conditions of community-based supervision, a team of court staff and mental health professionals works together to develop treatment plans and supervise participants in the community. (Council of State Governments, 2005). The goals of Mental Health Courts are to assist the mentally ill defendant in receiving and complying with psychiatric treatment, reduce incarceration of mentally ill offenders as this tends to

exacerbate their illness and make communities safer. As of 2009, there were 228 Mental Health Courts in the U.S.

Mental Health Alternative to Incarceration ("MHATI") is a case management program that provides individual service coordination to people with mental illness who have been arrested and sentenced by the court to participate in treatment services. The participant designs a service plan with the guidance of the MHATI case manager to ensure compliance with court requirements. MHATI assists the individual in accessing services and monitors the individual's compliance with treatment. The treatment plan may include, but is not limited to, participation in mental health treatment, educational and vocational services, alcohol and drug treatment services, and housing or recreation programs. This program provides a similar intervention of a Mental Health Court with a discreet calendar that allows for the broad range of mental illnesses affecting offenders.

Rockland County does not have a Mental Health Court or Mental Health Alternative to Incarceration program.

Mr. Gilles clearly needed a Mental Health Court or Mental Health Alternative to Incarceration program as they have in Westchester County and for which the Rockland County District Attorneys Office is hoping to receive funding; application for the program funding was made prior to Mr. Gilles' death. Mr. Gilles had a history of mental illness, criminality, alcohol/substance use and lack of medication compliance. This led to his psychiatric illness controlling his behavior that can result in violent acting out. Bouts of violence are not unusual with individuals diagnosed with paranoid schizophrenia who abuse substances and are not compliant with their medication. Psychiatrists believe and epidemiological evidence in schizophrenia studies supports the conclusion that there is a strong connection between substance abuse and criminal behavior.

VILLAGE OF SPRING VALLEY POLICE DEPARTMENT:

The Village of Spring Valley Police Department is located at 200 N. Main Street, Spring Valley, New York. The Village of Spring Valley Police Department is comprised of approximately fifty-five (55) police officers that cover approximately two (2) square miles.

In interviewing many Police Officers, it is clear that Mr. Gilles had abnormal strength; it took several officers to subdue him and/or arrest him if they needed to. Mr. Gilles was often a danger to himself and others.

P.O. Roper has approximately twenty (20) years of law enforcement experience. P.O. Roper has been employed with the Village of Spring Valley Police Department for approximately twelve (12) years; P.O. Roper was previously employed as a police officer with the City of Newburgh for approximately eight (8) years.

Every police officer in Rockland County must go through a Police Academy before becoming an officer. The Rockland County Police Academy, and other academies, teach new officers: how to handle a gun, how to fire it accurately, how to handle stressful situations, the fundamentals of shooting, trigger control, site pictures, movements on the range, changing dynamics in physical confrontations, diverging firearms scenarios, movements and defensive tactics, how to move and bring something to a conclusion as safe and quickly as possible. Every Police Officer re-certifies every year with respect to firearms.

Every police officer is also taught force continuum, which describes the types of force that Police Officers are allowed to use. The concept of force continuum legally allows police officers to meet the force used against them with the same type of force; the use of force ranges from voice commands, to soft hands – move someone out of the way, to hard hands – grab someone, wrist lock, arm thrust (physical), to mechanical – Taser, baton, gun. A Police Officer chooses options, depending upon what force he is confronted with; it is a dynamic situation; the force can increase and decrease immediately.

With respect to the use of a Taser, experts concurred that there were many factors which precluded the use of a Taser in this case; some were: the distance between P.O. Roper and Mr. Gilles would not have had any effect on incapacitating Mr. Gilles; the amount of clothing worn by Mr. Gilles would not have allowed the Taser prongs to penetrate Mr. Gilles' skin; the fact that P.O. Roper was utilizing the arm nearest the Taser to defend the blows of the nightstick to his head and the ferocity and speed of the attack.

THE SHOOTING:

On December 14, 2011, P.O. Roper was working a midnight shift at the Village of Spring Valley Police Department; he was in uniform and driving an unmarked "Tactical Unit" vehicle, a Sports Utility Vehicle. There were four other members of the Spring Valley Police Department working that night: P.O. Frank Gulla was the Dispatcher, P.O. Marta Rodriguez was on patrol, P.O. Lech Rosenbaum was on patrol and Sergeant C.J. Schnaars was the shift commander.

At approximately 2:29 a.m., the Spring Valley Police Department received a phone call from SECURITY GUARD of a disturbance at El Buen Gusto bar, located at 11 E. Furman Place, Spring Valley, New York. Phone recordings reveal that during the call to the police, Herve Gilles is heard in the background screaming unintelligibly. P.O. Roper and other members of the Spring Valley Police Department were dispatched to that location. It took P.O. Roper a few minutes to arrive at the bar. When he got there, he saw SECURITY GUARD outside the bar. SECURITY GUARD advised P.O. Roper that he had a problem with an apparently mentally disturbed man who became aggressive with him when he refused to allow the man into the bar. As P.O. Roper was talking with SECURITY GUARD, SECURITY GUARD pointed out the man walking northbound through the taxi stand lot in the transportation center (corner of E. Furman Place and Franklin Street).

P.O. Roper drove to where the man was; he immediately recognized the man as Herve Gilles. P.O. Roper knew Mr. Gilles. P.O. Roper had numerous encounters with Mr. Gilles and he knew that Mr. Gilles was mentally disturbed. P.O. Roper called out, "Herve". P.O. Roper asked Mr. Gilles to stop and talk to him as P.O. Roper wanted to see what was bothering Mr. Gilles; Mr. Gilles did not stop; Mr. Gilles continued to walk. Mr. Gilles shouted back to P.O. Roper something that was unintelligible.

P.O. Roper briefly lost sight of Mr. Gilles; he believed that Mr. Gilles went into the Alizeh convenience store briefly; Mr. Gilles came out with a plastic bag. P.O. Roper pulled his vehicle near Mr. Gilles as Mr. Gilles walked northbound on North Main Street. P.O. Roper spoke to Mr. Gilles from his vehicle; he again called out to him, "Herve." P.O. Roper told Mr. Gilles that it was late and suggested that Mr. Gilles go home and get some sleep. Mr. Gilles again shouted back at him something unintelligible; Mr. Gilles continued to West Church Street and then to N. Madison Avenue. As Mr. Gilles appeared to be leaving the area where he had caused the recent disturbance, P.O. Roper let Mr. Gilles go on his way.

P.O. Roper radioed the outcome of the incident to the Spring Valley Police Department headquarters. P.O. Roper advised P.O. Frank Gulla (dispatcher) that Herve Gilles was the subject of the complaint. P.O. Roper went back to patrol duties.

At approximately 3:25 a.m., P.O. Roper received another radio call from the desk that SECURITY GUARD from El Buen Gusto called again about Mr. Gilles; according to the dispatch report, Mr. Gilles was throwing rocks at the bar.

P.O. Roper responded to El Buen Gusto bar again. Upon arrival, P.O. Roper saw SECURITY GUARD again outside the bar. From his vehicle, P.O. Roper could see Mr. Gilles walking in the parking lot adjacent to the church, located on the southwest corner of Franklin Street and E. Furman Place. P.O. Roper did not stop to speak with SECURITY GUARD.

P.O. Roper drove his vehicle into the church parking lot; he went through the curb cut on Franklin Street in such a way as to obstruct Mr. Gilles from exiting the lot and emerging onto Franklin Street. As P.O. Roper was familiar with Mr. Gilles, he knew that Mr. Gilles could be unpredictable and violent. P.O. Roper exited his vehicle. It was extremely dark in this area and there were not many lights. P.O. Roper knew what Mr. Gilles was capable of unstable and volatile conduct; he took out his nightstick and held it in his hands for protection, as was his normal police practice.

P.O. Roper began to talk to Mr. Gilles; he told Mr. Gilles to turn around and put his hands on top of his head; P.O. Roper was going to investigate the rock-throwing incident. Mr. Gilles did not comply and instead shouted back at P.O. Roper unintelligibly. According to P.O. Roper, Mr. Gilles was clearly highly agitated and his fists were clenched. P.O. Roper's intention was to get Mr. Gilles in handcuffs for his own safety; once Mr. Gilles would be in handcuffs, he would check Mr. Gilles for weapons and determine if his condition warranted emergency mental health intervention (i.e., take Mr. Gilles for a psychiatric evaluation). P.O. Roper gave Mr. Gilles repeated verbal commands to turn away from him and put his hands on top of his head in order to secure Mr. Gilles; P.O. Roper repeated these commands several times. Mr. Gilles refused to comply with P.O. Roper's commands. Instead, Mr. Gilles shouted back at him, over P.O. Roper's voice. Mr. Gilles approached P.O. Roper in an aggressive manner. Despite several verbal commands, Mr. Gilles continued to aggressively close the gap between himself and P.O. Roper.

P.O. Roper was now seriously concerned for his own safety. As Mr. Gilles approached him, P.O. Roper struck Mr. Gilles in his left leg with P.O. Roper's nightstick. P.O. Roper hit Mr. Gilles with the nightstick because he intended to stun Mr. Gilles and buckle his leg so he could gain control of Mr. Gilles and handcuff him. When P.O. Roper struck Mr. Gilles with the nightstick, Mr. Gilles absorbed the nightstick blow with no apparent effect. Mr. Gilles then lunged at P.O. Roper. P.O. Roper attempted more nightstick blows, but Mr. Gilles closed on him in a fraction of a second.

Mr. Gilles tackled P.O. Roper to the pavement and attempted to seize his nightstick. At this time, P.O. Roper feared for his safety.

For a period of time, P.O. Roper and Mr. Gilles wrestled for control of the nightstick alternately knocking each other to the pavement.

At some point P.O. Roper got on top of Mr. Gilles and was straddling Mr. Gilles; Mr. Gilles reached around and bit P.O. Roper on his leg. During the struggle, Mr. Gilles exhibited great strength (as he has always done in the past); all P.O. Roper's efforts to regain full possession of the nightstick were futile. At one point, P.O. Roper was able to pin Mr. Gilles to the pavement and straddle him, with his nightstick positioned across Mr. Gilles' shoulders. P.O. Roper's hands were on the nightstick and both of Mr. Gilles' hands were also grabbing the nightstick. Up to this point, P.O. Roper had been locked in combat with Mr. Gilles using both of his hands to prevent Mr. Gilles from tearing the nightstick away, and had been unable to radio for help.

At this point Mr. Gilles momentarily relaxed and stated to P.O. Roper, "You got me." This indicated to P.O. Roper that Mr. Gilles was giving up. So, P.O. Roper let his guard down for a second. Then, without warning, Mr. Gilles "bucked" P.O. Roper off of him, tossing him like a "rag doll", and again began to attack P.O. Roper with ferocity that P.O. Roper had not before witnessed.

Mr. Gilles was able to knock P.O. Roper to the pavement again, while Mr. Gilles remained upright and maintained a grip on his nightstick. At some point, Mr. Gilles was able to break the grip of P.O. Roper's right hand from the nightstick and was attempting to pin and straddle him. P.O. Roper was on his back, trying to keep his legs and body positioned in such a way to prevent Mr. Gilles from getting on top of him.

While P.O. Roper struggled to maintain a grip on the tip of his nightstick with his left hand, he kicked at Mr. Gilles when Mr. Gilles attempted to jump on him, each time pushing Mr. Gilles back momentarily, only to have Mr. Gilles shrug off the kick and immediately make another attempt to pin P.O. Roper, giving him no chance to get off the ground or get to his feet. During this time, Mr. Gilles was pulling furiously on his nightstick.

As Mr. Gilles pulled on the nightstick, in desperation, P.O. Roper told Mr. Gilles to stop or he was going to have to shoot him. P.O. Roper had not drawn his gun at this time. Mr. Gilles responded, "You going to shoot me! You going to shoot me!" in an enraged voice. A moment later, Mr. Gilles pulled P.O. Roper's nightstick away from him completely. Mr. Gilles began to swing the nightstick down at P.O. Roper's head and face. P.O. Roper put his arms up to block the nightstick from striking his head.

Mr. Gilles' blow with the nightstick crashed into P.O. Roper's left arm, causing great pain and causing momentary numbness and impairment of P.O. Roper's left arm.

P.O. Roper knew that if Mr. Gilles' blow struck him in the head, it would have been sufficiently powerful to kill him or in the very least to render him unconscious and defenseless. Now, P.O. Roper was in fear for his life. P.O. Roper carried his department issued gun on his right side and his department issued Taser on his left side.

P.O. Roper remained on the pavement in a curled-up position. When it appeared that Mr. Gilles was going to strike him again with the nightstick, P.O. Roper drew his pistol with his right hand and fired in Mr. Gilles' direction in an attempt to stop Mr. Gilles' attack.

P.O. Roper was not sure if the round struck Mr. Gilles because Mr. Gilles continued to lunge down towards him.

P.O. Roper believed that Mr. Gilles was continuing his attack upon him so he fired an additional round. It was at this time that Mr. Gilles stopped moving and fell to the ground. Mr. Gilles stopped his assault on P.O. Roper.

P.O. Roper examined Mr. Gilles and saw that one of the rounds struck Mr. Gilles in the head; P.O. Roper was now finally able to radio for help. P.O. Rodriguez arrived and assisted him. Then Sgt. Schnaars and P.O. Rosenbaum arrived. Once the ambulance arrived at the scene, Sgt. Schnaars directed P.O. Roper to one of the ambulances to begin treatment for his injuries. P.O. Roper was transported to Good Samaritan Hospital where he was examined, treated and eventually discharged.

SCENE EVIDENCE:

Mr. Gilles was found laying face up in the parking lot located at the corner of E. Furman Place and Franklin Street, Spring Valley, New York. Mr. Gilles had P.O. Roper's nightstick in his right hand and had apparent gunshot wounds to his head and neck.

POLICE WITNESSES:

P.O. MARTA RODRIGUEZ:

On December 14, 2011, Police Officer Marta Rodriguez was working a midnight shift at the Village of Spring Valley Police Department; she was in uniform and driving a marked patrol vehicle performing routine patrol.

At approximately 2:29 a.m., the Spring Valley Police Department received a phone call of a disturbance at El Buen Gusto bar, located at 11 E. Furman Place, Spring Valley, New York. P.O. Rodriguez and other members of the Spring Valley Police Department were dispatched to that location. As P.O. Rodriguez was responding to the incident, she heard P.O. Roper radio the outcome of the incident to the Spring Valley Police Department headquarters stating that the subject was Mr. Gilles. P.O. Rodriguez went back to her patrol duties.

At approximately 3:22 a.m., she was still on patrol; P.O. Rodriguez was dispatched as secondary patrol vehicle to a call from the desk that security from El Buen Gusto called about Mr. Gilles throwing rocks at the bar. P.O. Rodriguez heard that P.O. Roper was dispatched to the area as well. P.O. Rodriguez got to the bar within minutes. When she got there she observed SECURITY GUARD in front of El Buen Gusto. P.O. Rodriguez spoke with SECURITY GUARD from her patrol vehicle; she never got out. SECURITY GUARD informed P.O. Rodriguez that the other officer was in the church parking lot. At that time, P.O. Rodriguez heard two gunshots coming from the direction in which SECURITY GUARD said P.O. Roper was. P.O. Rodriguez then heard P.O. Roper state on the radio, "shots fired." P.O. Rodriguez drove a few feet eastbound on E. Furman Place shining her spotlight towards the parking lot on her right. P.O. Rodriguez observed P.O. Roper in a sitting position on the lot with Mr. Gilles lying in front of him. P.O. Rodriguez ran into the lot, taking cover by P.O. Roper's vehicle; she came up to P.O. Roper; she asked P.O. Roper if he was okay; she went back to her patrol vehicle and retrieved crime scene tape to tape off the crime scene area; Sgt. Schnaars arrived; ambulances eventually arrived and she accompanied P.O. Roper to Good Samaritan Hospital.

P.O. Rodriguez was the only female Spring Valley Police Officer working the midnight shift on December 14, 2011. P.O. Rodriguez is not a short, heavy set black woman. Contrary to an unconfirmed report (See WITNESS #1), at no time did P.O. Rodriguez ever say to P.O. Roper, "don't shoot him, he's sick; don't kill him, he's a sick man."

It should also be noted that P.O. Rodriguez did not really know Mr. Gilles. She has seen Mr. Gilles around but did not have any personal contact with him; therefore, she would not know his mental capacity and/or how he acted on a regular basis.

P.O. LECH ROSENBAUM:

On December 14, 2011, Police Officer Lech Rosenbaum was working a midnight shift at the Village of Spring Valley Police Department; he was in uniform and driving a marked patrol vehicle performing routine patrol.

At approximately 2:29 a.m., the Spring Valley Police Department received a phone call of a disturbance at El Buen Gusto bar, located at 11 E. Furman Place, Spring Valley, New York. P.O. Rosenbaum and other members of the Spring Valley Police Department were dispatched to that location. It took P.O. Rosenbaum a few minutes to arrive at the bar. When he got there, P.O. Roper already was talking with Mr. Gilles from his patrol car; he immediately recognized Mr. Gilles. P.O. Rosenbaum knows Mr. Gilles. P.O. Rosenbaum had numerous encounters with Mr. Gilles and he knew that Mr. Gilles was mentally disturbed. P.O. Rosenbaum heard P.O. Roper call out, "Herve". P.O. Roper asked Mr. Gilles to stop and talk to him; Mr. Gilles did not stop; Mr. Gilles continued to walk. P.O. Roper told Mr. Gilles that it was late and suggested that Mr. Gilles go home and get some sleep. Mr. Gilles again shouted back at him something unintelligible; Mr. Gilles continued to West Church Street and then to N. Madison Avenue. As Mr. Gilles appeared to be leaving the area where he had caused the recent disturbance, they let Mr. Gilles go on his way.

P.O. Roper radioed the outcome of the incident to the Spring Valley Police Department headquarters stating that the subject was Herve Gilles. P.O. Rosenbaum went back to his patrol duties.

At approximately 3:22 a.m., P.O. Rosenbaum was in the processing room at the Spring Valley Police Department writing a report. At that time, P.O. Frank Gulla came in and told him that P.O. Roper reported "shots fired" in the area of 11 E. Furman Street. P.O. Rosenbaum immediately responded to the scene. When he arrived, he observed P.O. Roper sitting on the ground next to a prone black male, who he immediately recognized as Mr. Gilles. P.O. Rodriguez was already at the scene; Sgt. Schnaars came right after him. While waiting for an ambulance, he assisted in putting tape around the crime scene.

P.O. Rosenbaum had never seen P.O. Roper look the way he looked that night. P.O. Roper looked shaken, exhausted, could not stand on his own and looked as if he was in a fight.

P.O. Rosenbaum had numerous encounters with Mr. Gilles; on each of those encounters, Mr. Gilles was acting irrational, illogical and never had coherent speech (although he spoke and understood English). Mr. Gilles had mental issues. Mr. Gilles had abnormal strength; it always took several officers to get Mr. Gilles in a police car or to be handcuffed; he fought with the police every time; Mr. Gilles would spit and kick. Mr. Gilles was extremely dangerous to handle alone; he was often drunk, high on drugs or off of his medication.

SERGEANT CHARLES SCHNAARS:

On December 14, 2011, Sgt. Charles Schnaars was working a midnight shift at the Village of Spring Valley Police Department; he was in uniform and driving a marked patrol vehicle performing routine patrol.

At approximately 2:29 a.m., the Spring Valley Police Department received a phone call of a disturbance at El Buen Gusto bar, located at 11 E. Furman Place, Spring Valley, New York. Sgt. Schnaars and other members of the Spring Valley Police Department were dispatched to that location. As Sgt. Schnaars was responding to the incident, he heard P.O. Roper radio the outcome of the incident to the Spring Valley Police Department headquarters stating that the subject was Herve Gilles. Sgt. Schnaars went back to his patrol duties.

At approximately 3:22 a.m., Sgt. Schnaars was still on patrol in the area of the Blueberry Hill apartments. At that time, he heard another call from the desk that security from El Buen Gusto called again about Mr. Gilles throwing rocks. Sgt. Schnaars heard that P.O. Roper and P.O. Rodriguez were dispatched to the area. However, he headed towards the bar as well. While en route to the area, Sgt. Schnaars eventually heard "shots fired" being broadcast over the radio. Sgt. Schnaars activated his emergency lights and siren and proceeded to the area; he arrived moments after P.O. Rosenbaum. At that time, Sgt. Schnaars observed P.O. Roper crouched down next to Mr. Gilles. P.O. Roper was distraught and obviously exhausted.

Sgt. Schnaars observed P.O. Roper's nightstick in Mr. Gilles' hand; Sgt. Schnaars immediately recognized Mr. Gilles from prior incidents. On numerous occasions, Sgt. Schnaars has observed Mr. Gilles' psychotic behavior. Mr. Gilles had abnormal strength; it took several officers to subdue him and/or arrest him.

Mr. Gilles had an apparent wound to his head and was bleeding; Sgt. Schnaars concluded that Mr. Gilles was deceased. Sgt. Schnaars asked P.O. Roper if he was injured; P.O. Roper indicated that his forearm was injured; Sgt. Schnaars requested two (2) ambulances to the scene. When Medics arrived, Mr. Gilles was pronounced dead at 3:42 a.m.

Sgt. Schnaars had P.O. Rodriguez and P.O. Rosenbaum put crime scene tape around the church parking lot. The Rockland County Medical Examiner and Rockland County Bureau of Criminal Investigation were requested to the scene.

CIVILIAN WITNESSES:

SECURITY GUARD:

On December 14, 2011, while working at El Buen Gusto Bar, located at 11 E. Furman Place, Spring Valley, New York, SECURITY GUARD had an incident with, what he classified as, a mentally disturbed individual. This individual was later identified as Herve Gilles. Mr. Gilles was acting intoxicated and crazy. Mr. Gilles tried to come into the bar, but SECURITY GUARD would not let him due to Mr. Gilles' actions. Mr. Gilles started to curse at SECURITY GUARD; SECURITY GUARD asked Mr. Gilles to leave the bar; Mr. Gilles refused to leave the bar.

It should be noted that SECURITY GUARD had seen Mr. Gilles on prior occasions. SECURITY GUARD specifically remembered members of the Spring Valley Police Department trying to place Mr. Gilles in an ambulance; Mr. Gilles was kicking and screaming at the officers.

At approximately 2:29 a.m., SECURITY GUARD called the Spring Valley Police Department because of the disturbance at El Buen Gusto bar with Mr. Gilles. It took P.O. Roper a few minutes to arrive at the bar. SECURITY GUARD advised P.O. Roper that he had a problem with an apparently mentally disturbed man who became aggressive with him when he refused to allow the man into the bar. SECURITY GUARD pointed out Mr. Gilles to P.O. Roper. P.O. Roper drove his vehicle towards Mr. Gilles. SECURITY GUARD went back to his duties.

Approximately forty-five minutes to an hour later, Mr. Gilles went back to El Buen Gusto. SECURITY GUARD came outside of the bar and Mr. Gilles began to yell and curse at SECURITY GUARD. Mr. Gilles screamed, "I'm going to fuck you in the ass; suck my dick; want to see my dick?" Mr. Gilles then made a "sniping" motion - as if he was holding a rifle and said, "I'm going to shoot you. I'm going to snipe you." SECURITY GUARD told Mr. Gilles to leave and SECURITY GUARD went back into the bar. When SECURITY GUARD went into the bar, Mr. Gilles walked off towards the church and went up to the front door of the church. SECURITY GUARD eventually came back outside and Mr. Gilles then came back towards him. While Mr. Gilles was walking towards SECURITY GUARD, Mr. Gilles picked up a rock and came back towards the bar - as if he was going to throw the rock at SECURITY GUARD. SECURITY GUARD went back into the bar again; SECURITY GUARD eventually came back outside again. When SECURITY GUARD came back outside, Mr. Gilles again came up to the bar with a rock in his hands as if he was going to throw the rock at SECURITY GUARD.

At 3:21 a.m. SECURITY GUARD called the police. P.O. Roper arrived in less than a minute. Mr. Gilles was walking back towards the church. P.O. Roper followed Mr. Gilles into the lot of the church. SECURITY GUARD lost sight of Mr. Gilles and P.O. Roper so he walked into the road and saw the P.O. Roper outside of his police vehicle; he saw P.O. Roper hold his nightstick in his right hand (with the nightstick at his side) and his left hand out as if to stop Mr. Gilles. SECURITY GUARD heard P.O. Roper order Mr. Gilles to turn around and put his hands on top of his head. SECURITY GUARD saw Mr. Gilles not comply with P.O. Roper's commands; he saw Mr. Gilles

going towards P.O. Roper. SECURITY GUARD had a customer at the door of El Buen Gusto so he walked back towards the bar and lost sight of Mr. Gilles and P.O. Roper.

As SECURITY GUARD was patting down the customer, SECURITY GUARD heard two (2) gunshots coming from the church parking lot where he last saw Mr. Gilles and P.O. Roper. SECURITY GUARD walked back into the roadway and P.O. Rodriguez arrived in her patrol car. P.O. Rodriguez asked SECURITY GUARD what happened; she never got out of her car to speak with SECURITY GUARD. SECURITY GUARD told her, "I don't know but that cop over there needs help." SECURITY GUARD pointed her in the direction of the church parking lot. When he looked down the road he could see P.O. Roper with his hands on Mr. Gilles as Mr. Gilles lay on the ground; Mr. Gilles was laying on his back – face up. P.O. Rodriguez pulled her car down by the church and climbed over the wall. P.O. Rodriguez ran towards the two men and then ran back to her car. SECURITY GUARD observed P.O. Rodriguez retrieve a bag from her car and then went back to her car and began to tape off the area. SECURITY GUARD then went back to the bar door to continue his duties; he could not see what was going on in the lot at that time; he did observe a lot of police cars and ambulances in the area.

WITNESS #1:

WITNESS #1 is a taxi driver in the Village of Spring Valley area. WITNESS #1 was a very good friend of Herve Gilles. WITNESS #1 had been a friend of Mr. Gilles for more than twenty years; in fact, Mr. Gilles used to live in WITNESS #1's house. Some time after Mr. Gilles left WITNESS #1's house, Mr. Gilles became mentally ill. He knows that Mr. Gilles has a drinking problem and gets crazy when he drinks. He has seen the Spring Valley Police Department take Mr. Gilles into custody to go to Good Samaritan Hospital. He also knew that Mr. Gilles was supposed to take medication to help with his Schizophrenia.

On December 14, 2011, WITNESS #1 was working. At approximately 3:00 a.m. WITNESS #1 saw Mr. Gilles outside of El Buen Gusto with SECURITY GUARD. WITNESS #1 saw SECURITY GUARD flashing his flashlight at Mr. Gilles, as if to tell Mr. Gilles to leave the area.

At approximately 3:15 a.m., WITNESS #1 was parked near El Buen Gusto. WITNESS #1 heard gunshots. WITNESS #1 claims that he saw a female police officer outside of her car in front of the bar talking to SECURITY GUARD of El Buen Gusto; WITNESS #1 describes this female police officer as short, heavy-set and black. WITNESS #1 claims that before the shots were fired he heard this female police officer shout, "Don't shoot him, he's sick; don't kill him, he's a sick man." WITNESS #1 also claims that his car windows were up because it was a very cold night.

WITNESS #1 then claims that he drove his car to the church lot and saw P.O. Roper; P.O. Roper was fifteen feet away from him and called him by name and said, "Get out of here." WITNESS #1 also stated that members of the Spring Valley Police Department saw a "drunk Mexican guy" in the street and "threw" him in a car and drove the "Mexican guy" away.

WITNESS #1's claim of the female police officer shouting to P.O. Roper was not corroborated by any other witness. In fact, the officer described by WITNESS #1 does not fit the description of P.O. Rodriguez, who was the only female police officer working that night; the only female police officer who could possibly fit this description was not working the midnight shift on December 14, 2011. This investigation has revealed that P.O. Rodriguez, the only female police officer working in the Village of Spring Valley that night, did not state this and was not in the parking lot when the gunshots were fired.

Based upon this investigation, there is also no corroboration that a "drunk Mexican guy" was in the area at this time; there is no corroboration that any officer drove a "drunk Mexican guy" away; there is no corroboration that P.O. Roper told WITNESS #1 to leave the area.

WITNESS #1 did not see or hear anything that happened between Mr. Gilles and any police officer that night in the church parking lot.

WITNESS #2:

WITNESS #2 is a taxi driver in the Village of Spring Valley area. On December 14, 2011 sometime between 2:00 a.m. to 3:00 a.m., WITNESS #2 parked his taxi in front of El Buen Gusto. His car was the only car in front of the bar. He parked there for a few minutes. He saw a black man wearing a black coat and something on his head standing on the sidewalk in front of the bar; the black male was by himself. As WITNESS #2 was sitting in his taxi, the black male turned to him and pretended that he was shooting him two times with his fingers. The black male looked and acted like he was drunk or crazy. WITNESS #2 then left the area because of a fare.

WITNESS #2 did not see or hear anything that happened between Mr. Gilles and any police officer that night in the church parking lot.

WITNESS #2 does not know Mr. Gilles.

WITNESS #3:

WITNESS #3 was a taxi driver in the Village of Spring Valley area. WITNESS #3 was a very good friend of Herve Gilles. WITNESS #3 had been a friend of Mr. Gilles for more than twenty years.

On December 14, 2011, WITNESS #3 was driving a taxi cab. Between 12:00 a.m. and 1:00 a.m., WITNESS #3 took Mr. Gilles to Kennedy Fried Chicken; WITNESS #3 gave Mr. Gilles five dollars so Mr. Gilles could eat something. Mr. Gilles was drunk and "out of sorts"; according to WITNESS #3, Mr. Gilles gets like this one to two times per week. WITNESS #3 knew that it was not going to be a good night for Mr. Gilles.

At approximately 2:00 a.m., WITNESS #3 saw Mr. Gilles at El Buen Gusto. At approximately 2:30 a.m., WITNESS #3 saw Mr. Gilles try to get into the bar but SECURITY GUARD would not let Mr. Gilles in; WITNESS #3 saw Mr. Gilles go to a taxi driver to get money; WITNESS #3 then saw SECURITY GUARD flash a flashlight at Mr. Gilles. At approximately 3:00 a.m. WITNESS #3 saw Mr. Gilles pick up rocks like he was going to throw them. WITNESS #3 then went inside El Buen Gusto; while inside WITNESS #3 heard gunshots.

WITNESS #3 did not see or hear anything that happened between Mr. Gilles and any police officer that night in the church parking lot.

WITNESS #4:

WITNESS #4 is a taxi driver in the Village of Spring Valley area. WITNESS #4 has seen Mr. Gilles in the Spring Valley area in the past.

On December 14, 2011 at approximately 2:00 a.m., WITNESS #4 was going into El Buen Gusto bar. At that time, WITNESS #4 saw Mr. Gilles was outside in front of the bar talking to himself as he usually does.

At approximately 3:20 a.m., WITNESS #4 was still inside the bar and heard two gunshots. WITNESS #4 went outside and learned that Mr. Gilles was shot.

WITNESS #4 did not see or hear anything that happened between Mr. Gilles and any police officer that night in the church parking lot.

WITNESS #5:

WITNESS #5 is a taxi driver in the Village of Spring Valley area. WITNESS #5 had seen Mr. Gilles around the Spring Valley area in the past.

On December 14, 2011 at approximately 3:10 a.m., WITNESS #5 was inside his taxi cab. WITNESS #5 saw Mr. Gilles was outside El Buen Gusto bar, in the front. WITNESS #5 saw Mr. Gilles was talking to SECURITY GUARD; Mr. Gilles then walked to the corner of the bar next to the alleyway. WITNESS #5 observed SECURITY GUARD waive his flashlight at Mr. Gilles; WITNESS #5 is not sure if SECURITY GUARD wanted Mr. Gilles to move or not. WITNESS #5 looked down to get a piece of paper and when WITNESS #5 looked up, Mr. Gilles was gone.

A short time later, WITNESS #5 heard two gunshots, but did not see what occurred. WITNESS #5 overheard a group of "Spanish guys" say that someone was shooting. WITNESS #5 then observed a female police officer arrive at about the same time the shots were being fired. SECURITY GUARD told everyone to leave. WITNESS #5 backed up onto Main Street and went towards Rt. 59 to see if there were any cab fares.

WITNESS #5 did not see or hear anything that happened between Mr. Gilles and any police officer that night in the church parking lot.

WITNESS #6:

WITNESS #6 lives in Spring Valley and was a very good friend of Mr. Gilles. WITNESS #6's name was given to the Rockland County District Attorneys Office as a witness to this incident by representatives of Mr. Gilles' family. Upon interviewing WITNESS #6, it was learned that he did not observe anything in the area of the church parking lot or El Buen Gusto bar on December 14, 2011 involving Herve Gilles. In fact, WITNESS #6 was in Maine when this incident occurred. WITNESS #6 provided the Rockland County District Attorneys Office with his bus ticket information, which corroborated that WITNESS #6 was in Maine on December 14, 2011.

WITNESS 7:

WITNESS #7 lives in Spring Valley. WITNESS #7's name was given to the Rockland County District Attorneys Office as a witness to this incident by representatives of Mr. Gilles' family. Upon interviewing WITNESS #7, WITNESS #7 denied all knowledge of any events in the area of the church parking lot or El Buen Gusto bar on December 14, 2011 involving Herve Gilles.

WITNESS #8:

WITNESS #8 owned a family care home for the mentally ill. Hervé Gilles lived there for 5 years. WITNESS #8 said that Mr. Gilles would come and go without restriction. Mr. Gilles went to Church every day to help out (took bus). WITNESS #8 advised that the people at the Church only saw and knew Mr. Gilles when he was sober.

WITNESS #8 also advised that Mr. Gilles had no family in the area; Mr. Gilles was left alone for more than twenty (20) years in this country. No one ever visited him; no one ever called him; Mr. Gilles only called his father in Haiti once in a while. WITNESS #8 tried to get Mr. Gilles to save his money so he could visit his father in Haiti.

According to WITNESS #8, Mr. Gilles would receive a check from New York State for his disability. When the check came, Mr. Gilles would use that money to buy alcohol and marihuana. WITNESS #8 advised that when Mr. Gilles drank alcohol no one could go near him; when he drank and smoked marihuana Mr. Gilles became crazy; WITNESS #8 was afraid of Mr. Gilles. WITNESS #8 believed that Mr. Gilles should have never been on the street – he needed to be in a mental hospital.

According to WITNESS #8, when Mr. Gilles got drunk and/or high, he called himself a “demon.” One time, Mr. Gilles was shaking, threw himself on the floor and was screaming, “don’t touch me, I’m the devil” as he was kicking and spitting at the police.

AUTOPSY:

The Medical Examiners Office of Rockland County conducted the autopsy on Herve Gilles. The Medical Examiners Office is charged with the duty of overseeing all of the death investigations that take place of individuals who die in the community suddenly, unexpectedly, suspiciously or due to violence; it performs autopsies, death scene investigations, writes reports and interacts with different agencies.

The Medical Examiner is charged with the responsibility of conducting a multi-phase investigation of a death. There are six stages:

1. History of the case and deceased: usually comes from eyewitnesses, law enforcement or health care personnel; developing background information;
2. Scene investigation: Investigators go to a scene, look at the corpse, write notes, take photographs, videotape, speak with witnesses, collect information/evidence; the body is taken from the scene to the Medical Examiners laboratory;
3. Autopsy: medical procedure performed post-mortem to determine cause of death; main mission is to determine the cause of death; including an external exam – examine the body from top to bottom; including a clothing exam – check for fabric defects, gun powder, tears, stains; internal, invasive or surgical exam - incisions, examine organs, make descriptive reports, collection of samples of body tissue and fluid for scientific analysis;
4. Laboratory phase: specimens collected are sent to lab; examined the findings for pathologist report;
5. Pathologist report: findings/report of the investigation;
6. Signing of the death certificate: a legal document; includes biological information, manner of death and characterization of death

On December 14, 2011 an autopsy was performed on Herve Gilles. After performing the autopsy, the Medical Examiners Office prepared a report.

Based upon the Autopsy Report, Mr. Gilles was wearing eighteen pounds of clothing, including, but not limited to: a black zippered hooded sweatshirt, a grey/green woman's jacket, a black zippered jacket, a black vest, a long sleeved shirt, an inside-out white short sleeve t-shirt, a grey hooded sweatshirt, a black fleece jacket, a black and tan patterned long sleeve dress shirt, white thermal pants, grey socks, brown hiking boots, black dress pants, a black belt, a navy/black fannie pack, and a black cap.

Mr. Gilles was described as a well-developed, well-nourished man, who appeared slightly younger than his reported age.

Mr. Gilles had several wounds that were consistent with scraping on a hard surface:

- ¼" wide abrasion on right shin
- multiple fresh ¼" – ½" wide abrasions across the proximal phalanges of right hand
- 2 fresh ¼" abrasions on the back of the distal and middle phalanges of the right 5th finger
- fresh ¾" abrasion on back of right hand near wrist
- multiple fresh ½" – ¾" wide abrasions across the back of middle phalanges of left 3rd, 4th and 5th fingers

- fresh 1/8" abrasion on the back of middle phalange of left 4th finger

An internal exam was conducted; there was evidence of a neck compression with petechial hemorrhage in Mr. Gilles' eyes. This is consistent with being choked. This choke could have been for seconds – but did not cause Mr. Gilles to pass out and did not cause his death.

There were two (2) bullet wounds found on Mr. Gilles.

There was a superficial, non-incapacitating gunshot wound to the neck; the entrance is situated on front of lower neck; located 11" below top of head and 1" left of midline. Again, this wound was superficial – meaning it did not cause Mr. Gilles' death and it would not have rendered Mr. Gilles incapacitated. A faint powdery black discoloration was found on the elastic collar of the white t-shirt. These findings are suggestive of gunpowder residue, which would indicate a close-range shot (two feet or less). No bullet was recovered in the neck area, indicating that the bullet came out of the body.

There was a gunshot wound of the head (left face); left side of face just next to lateral aspect of eye. There was no stippling found on skin, which indicates the shot was from more than two feet away. The bullet penetrated the skull and passed through the brain front to back, left to right and upwards.

Based upon the autopsy report of Mr. Gilles, the formal cause of death was Homicide – which indicates that another individual caused his death.

LABORATORY FINDINGS:

National Medical Services Laboratory in Willow Grove, Pennsylvania performed a toxicology screening. Mr. Gilles' urine analysis indicated that Mr. Gilles had a 0.20 percent alcohol level; his blood alcohol content was 0.11 percent. Normal blood alcohol level for an individual who has not consumed alcohol is 0.00 percent. For the state of New York, to be Driving While Intoxicated, the legal standard to determine intoxication is 0.08 percent.

Marihuana was also found in Mr. Gilles' system. This analysis revealed that the marihuana use was recent.

Based upon investigation, it was learned that Mr. Gilles was a chronic alcoholic and a paranoid schizophrenic. Mr. Gilles' mental health records were reviewed; these records were quite extensive. Because Mr. Gilles was a paranoid schizophrenic, he should have been taking psychotropic medication to stabilize him. The toxicology report from NMS Laboratory indicated that there were no psychotropic medication in Mr. Gilles' system.

Based upon the amount of alcohol found in Mr. Gilles' system, along with the elevated levels of marihuana and no psychotropic medication in his system, Mr. Gilles behavior was consistent with the violent behavior described by P.O. Roper – that of an intoxicated/drugged mentally ill individual not taking prescribed psychotropic medication.

The Rockland County District Attorneys Office hired a Forensic Dentist. The Forensic Dentist examined the bite to P.O. Roper's leg. The analysis was inconclusive; however, the Forensic Dentist believes that the mark on P.O. Roper could be a human bite.

RJ Lee Group was hired by the Rockland County District Attorneys Office to examine the bullet hole in the white t-shirt worn by Mr. Gilles for gunshot residue. RJ Lee Group found that the white t-shirt was positive for the presence of nitrites and lead residues consistent with the occurrence of a projectile being discharged from a firearm. Distance determination was inconclusive due to the presence of blood in the bullet hole in the white t-shirt.

SURVEILLANCE VIDEO:

Based upon this investigation, there were no surveillance videos recording the events that transpired in the parking lot located on the corner of E. Furman Place and Franklin Street, Spring Valley, New York on December 14, 2011.

There have been inquiries of the Rockland County District Attorneys Office concerning surveillance cameras at the Metro-North Railroad Spring Valley Station. This investigation has revealed that there are no working cameras at the location; the cameras that are at this Station are old and left from a system that was used approximately ten years ago; Metro-North has been notified of the old cameras.

THE LAW:

Two provisions of New York law are applicable to the use of deadly physical force by a police officer in this scenario. The conduct can fall under one or both of those scenarios.

Firstly, Justification is defined in PL Section 35.15 as follows:

A person may use physical force upon another person in defense of himself when and to the extent he reasonably believes such to be necessary to defend himself from what he reasonably believes to be the use or imminent use of unlawful physical force by such other person. A person cannot use deadly physical force in defense of himself unless he reasonably believes that such other person is using or is about to use deadly physical force.

The law defines deadly physical force as physical force, which, under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or other serious physical injury, that is, substantial risk of death, serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. Only if physical force satisfies that definition is it deadly physical force.

The Grand Jury had to determine whether P.O. Roper reasonably believed that Mr. Gilles was using deadly physical force. To decide whether the belief was reasonable, the Grand Jury had to decide whether a reasonable person in the situation, in the circumstances that P.O. Roper found himself could have such a belief.

Secondly, under Penal Law Section 35.30, a police officer, in the course of effecting or attempting to effect an arrest or of preventing to prevent the escape from custody of a person whom he reasonably believes to have committed an offense, may use physical force when and to the extent he reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody or to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force, except that he may use deadly physical force for such purposes when he reasonably believes that the offense committed or attempted by such person was a felony or an attempt to commit a felony involving the use or attempted use or threatened imminent use of physical force against a person.

In New York, assault on a police officer with a weapon such as a nightstick is a felony crime under different theories. If the Grand Jury found that P.O. Roper reasonably believed that Mr. Gilles was assaulting P.O. Roper with a nightstick, used as a deadly weapon, the use of deadly physical force by P.O. Roper would be justified.

CONCLUSION:

Since the date of this incident, the Rockland County District Attorneys Office decided to present the evidence in this case to a Grand Jury. A Grand Jury is comprised of citizens from the community, specifically in this case Rockland County, New York. The Grand Jury was charged with the responsibility of reviewing evidence and determining whether the P.O. Roper's conduct was justified or should result in criminal charges. In this case, a Grand Jury was essential to address and consider the accounts of several witnesses to the incident and to determine the reasonableness of P.O. Roper's actions.

The Grand Jury has concluded its investigation and returned a No True Bill against P.O. Roper; P.O. Roper had an honest and reasonable belief that Mr. Gilles was about to use or was threatening to use deadly physical force against him when he shot Mr. Gilles. The Grand Jury has found P.O. Roper's actions in using deadly physical force against Herve Gilles to be justified.